1747

SUPREME COURT OF THE UNITED STATES.

No. 175.

THE UNITED STATES, PLAINTIFFS IN ERROR,

v.

GOTLIEB BREITLING.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF ALABAMA.

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United States of America, Southern District of Alabama.

Pleas had before the honorable the Circuit Court of the United States, for the Fifth Judicial Circuit and Southern District of Alabama, at a Term thereof began and held in and for said District at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-six; the Honorable John Gayle, Judge of said Court, presiding.

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Be it remembered, that heretofore, to wit, on the eighth day of July, in the year of our Lord one thousand eight hundred and fifty-four, the United States of America commenced in the said Court this suit by summons and complaint against Gotlieb Breitling, in the words and figures following, to wit:

Summons.

The United States of America, Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

The President of the United States to the Marshal of said District, greeting: You are hereby commanded to summon Gotlieb Breitling, who is a citizen of the State of Alabama, to appear before the Honorable the Circuit Court aforesaid, on the fourth Monday of December next, then and there to answer the complaint of the United States of America. And have you then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this second Monday of April, in the year of our Lord one thousand eight hundred and fifty-four. Issued the eighth day of July, in the year of our Lord one thousand eight hundred and fifty-four.

Attest, JOHN FITTS,
Clerk.

Circuit Court, Southern District of Alabama.

Complaint.

United States of America, Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama. Fall Term, 1854.

THE UNITED STATES OF AMERICA, Plaintiffs,
v.
GOTLIEB BREITLING, Defendant.

The plaintiffs claim of the defendant the sum of twenty-five thousand dollars, lawful money of the United States, which he owes to, and unjustly detains from them. For that whereas the said defendant heretofore, to wit, on the seventh day of May, A.D. eighteen hundred and forty-nine, at to wit, in the District aforesaid, and within the jurisdiction of this Court, by his certain writing obligatory, sealed with his seal, and to the Court now here shown, the date whereof is the same day and year last before specified, acknowledged himself to be held and firmly bound jointly and severally unto the said plaintiffs in the said sum of twenty-five thousand dollars, to be paid to the said United States, which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, to wit, that the President of the United States had, pursuant to law, appointed one David E. Moore Receiver of Public Moneys in the District of lands subject to sale at Demopolis, in the State of Alabama, until the end of the next Session thereafter of the Senate of the United States, by commission dated the seventh day of April, A.D. eighteen hundred and forty-nine.

It is further alleged, that if the said David E. Moore should truly and faithfully execute, and continue truly and faithfully to execute and discharge all the duties of his said office of Receiver as aforesaid, then the said writing obligatory should be void, and of none effect, otherwise to abide and remain in full force and virtue; and although the said David E. Moore had been so appointed Receiver as aforesaid, yet he, the said David E. Moore, hath not, from the time of the making of the said writing obligatory, truly and faithfully executed and discharged all the duties of his said office of Receiver aforesaid, but that while said Moore was Receiver as aforesaid under said writing obligatory, and after the making and delivery thereof, to wit, on the seventh day of May, A.D. eighteen hundred and forty-nine aforesaid, and on divers other days thereafter, before the commencement of this suit, to wit, at his office in said District, he the said Moore, as such Receiver, and according to law, received divers large sums of money properly payable, and paid to him, for and on account of said plaintiffs, that is to say, sums amounting in the aggregate to a certain sum to wit, ten thousand dollars, and, thereafter to wit, on the thirteenth day of September, A.D. eighteen hundred and fifty, the said Moore was indebted and is still indebted to the said plaintiffs on account of the said moneys so received as aforesaid in a certain large balance, to wit, a balance of eight thousand four hundred and seven dollars and seventy-nine cents ($8407\frac{79}{100}$), which said balance the said Moore hath wholly failed and refused, and still neglects and re-

fuses to pay to the plaintiffs, in breach of the said writing obligatory. By reason of which said breach the said writing obligatory became forfeited, and thereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of twenty-five thousand dollars. Yet the said defendant, although often requested to pay the said sum of money above demanded to the said United States, has not as yet paid the said sum of money above demanded, or any part thereof, to the said United States, but he, the said defendant, hath hitherto wholly refused and still refuses to pay the same or any part thereof to the said United States, to the damage of the said United States of twenty-five thousand dollars, and therefore they bring suit, and so forth.

A. J. REQUIER,
United States Attorney, Southern District of Alabama.

Marshal's Return on Process.

"Received, 10 July, 1854, and on the eighteenth day of October, 1854, I executed this writ by serving the defendant with a copy.

C. M. GODBOLD,
United States Marshal.
By W. H. GASQUE,
Deputy Marshal."

Minutes.

And afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and fifty-five, the same being a day of the term of said Court, begun and held in and for the said district at Mobile, on the fourth Monday of December, A.D. 1854, the following proceedings were had in this cause, to wit:

Continuance.

THE UNITED STATES
v. } 3283.
GOTLIEB BREITLING.

This day came the parties by their attorneys, and on the application of defendant, and on his affidavit filed, it is ordered by the Court that this cause be continued until the next term.

Continuance, with Leave to Amend.

And afterwards, to wit, on the sixteenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, the same being a day of the term of said Court, begun and held in and for said district at Mobile, on the second Monday of April, A.D. 1855, the following proceedings were had in said cause, to wit: It is ordered by the Court that this cause be continued until the next term of this

Court; and on application of the plaintiff leave is given to amend pleadings.

And afterwards, to wit, on the third day of January, in the year of our Lord one thousand eight hundred and fifty-six, the same being the day of the term of said Court, begun and held in and for said district, at Mobile, on the fourth Monday of December, A.D. 1855, the following order was made in said cause, to wit:

Continuance.

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With the consent of the parties, by their counsel, it is ordered by the Court that this cause be continued until the next term of this Court.

And afterwards, to wit, at a term of said Court, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-six. This day came the said defendant in said cause, and filed the following pleas, to wit:

Pleas Filed.

First. And the said defendant, by his attorneys, comes and defends the wrong and injury when, &c., and craves oyer of the said supposed writing obligatory, in the said declaration mentioned, and it is read to him in the words and figures following. (*See said bond copied fully and at large, Bill of Exceptions, page 67 of this record.*) Which being read and heard, the said defendant says the original of the said writing obligatory, printed as shown by an inscription thereof, was furnished to the said David E. Moore from the Treasury Department of the United States aforesaid, with the blanks therein filled up in writing at the said Treasury Department, with the exception of the names of the obligors, the date of said writing, and the subscribing witnesses thereto; and that said writing obligatory, when prepared at, and furnished by the Treasury Department of the United States as aforesaid, and before it was signed by any of the obligors therein named, contained the printed stipulations and directions thereon, requiring the signatures of the obligors therein, to be witnessed by two witnesses. And the said defendant in fact says and avers, that after his name was affixed to said writing obligatory as one of the obligors therein named, the said writing obligatory was, as to him, the said defendant, without his knowledge or consent altered and changed, by the addition thereto of the names of the subscribing witnesses, to wit, John G. Walton and James Lancaster aforesaid, and this with the view and intention of affecting and fixing the liability of him, the said defendant, as one of the obligors in said

writing obligatory. Wherefore the said defendant says that the said supposed writing obligatory, in the plaintiff's declaration mentioned, is not his act and deed. And of this he puts himself upon the country.

2. *Second.* And the said defendant, defending in like manner, for a further plea in this behalf, says, that the said supposed writing obligatory, in the plaintiffs' declaration mentioned, is not his deed. And of this he puts himself upon the country.

3. *Third.* And the said defendant, defending in like manner, for further plea in this behalf, says, that the said plaintiffs ought not to have and maintain their aforesaid action thereof against him, the said defendant, because he says that after the making of the said supposed writing obligatory, and the alteration thereof, as alleged by the said defendant in his first plea by him above pleaded, the said plaintiffs, to wit, on the 29th day of October, in the year 1849, were duly notified and requested by this defendant so to proceed in regard to the said David E. Moore, Receiver of Public Moneys as aforesaid, and to the supposed liability of the obligors in said writing obligatory, as to release and discharge the said defendant from all liability or supposed liability on said writing obligatory; and the said defendant in fact says, the said plaintiffs, disregarding such notice and request, failed and refused to proceed against the said David E. Moore, or any other party to said writing, for a long space of time, to wit, from the said 29th of October, 1849, until the 8th day of July, 1854; and the said defendant in fact further says, that the said David E. Moore, on the said 29th day of October, A.D. 1849, and up to the thirtieth day of September, A.D. 1850, and for a long time thereafter, to wit, for the space of twelve months after the said 30th day of September, 1850, was, and continued for and during all the time aforesaid, entirely solvent, and able to pay and discharge the entire amount claimed by the said plaintiffs in this suit, and was also during all the said time within the jurisdiction of this Court. But afterwards, and before the commencement of this suit, to wit, on the first day of September, in the year 1851, removed from the same to the State of Texas, whereby and in consequence of which failure of the said plaintiffs, upon notice and request as aforesaid, to proceed against said Moore, and discharge from all supposed liabilities his alleged sureties as aforesaid, this defendant was deprived of all recourse against the said Moore for his reimbursement as such supposed surety, and was discharged from all supposed liability on said writing obligatory. And this he, the said defendant, is ready to verify. Wherefore he prays judgment, &c.

4. *Fourth.* And the said defendant, defending in like manner, for further plea in this behalf, says, that the said plaintiffs ought not to have and maintain their aforesaid action thereof against him the said defendant, because he says that on the 29th day of October,

1849, and before the said David E. Moore became indebted to the plaintiffs in the amount alleged and claimed in the said declaration, the said plaintiffs were duly notified by the defendant and Robert H. Carson, whose name also appears to said writing obligatory, that they, the said defendant and Carson, were not willing and did not intend to be held bound as the surety of the said David E. Moore, but on the contrary thereof, that they desired to be released and absolved from all claim or demand as supposed sureties of said David E. Moore. And the said defendant in fact says that the said plaintiffs wholly refused to interfere and arrest the further progress of the said Moore as Receiver of Public Moneys as aforesaid, or to proceed against him according to law, but on the contrary thereof, and notwithstanding the notice aforesaid, permitted the said Moore to proceed and exercise the duties of said office of Receiver, and to receive and collect for the said plaintiffs the moneys claimed in said declaration, and wholly failed and refused to proceed against said David E. Moore, when in truth and in fact the said David E. Moore at the time when said supposed liability occurred, and for a long time thereafter, to wit, for the space of twelve months after the 30th day of September, 1850, was entirely solvent, and fully able to pay and discharge said supposed liability, and resided within the jurisdiction of this Court, from which he afterwards, and before the bringing of this suit, to wit, on the first day of September, in the year 1851, he, the said Moore, removed and went to the State of Texas with his property and effects, whereby and in consequence of which said failure to proceed upon said written notice as aforesaid, the said defendant was absolved from any and all supposed liability, and this he is ready to verify. Wherefore he prays judgment, &c.

5th. And the said defendant, defending in like manner, for further plea in this behalf says, that the said plaintiff ought not to have and maintain his aforesaid action thereof against him, the said defendant, because he says, that the several supposed causes of action thereof against him, the said defendant, in the declaration mentioned, did not, nor do either of them, accrue to the said plaintiffs at any time within years next before the commencement of this suit, in this behalf in manner and form as the said plaintiff hath alleged. And this the defendant is ready to verify. Wherefore he prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against him, the said defendant.

6. *Sixth.* And the said defendant, defending in like manner, for further plea in this behalf, says, that the said plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says that heretofore, to wit, on the day of , and before the commencement of this suit in this behalf, David E. Moore, the principal obligor in the writing obligatory in the plaintiffs' declaration mentioned, fully paid to said plaintiffs the several sums of money

claimed and specified in the plaintiffs' declaration. And this the said defendant is ready to verify. Wherefore he prays judgment, &c.

T. S. LYON.
MANNING & WALKER,
For Defendant.

Filed 14th April, 1856.

GEO. E. HOLT,
Clerk.

The State of Alabama, Mobile County.

Before me, William Brooks, a Justice of the Peace in and for said County, personally appeared Gotlieb Breitling, who is to me personally known, and maketh oath that the foregoing first and second pleas in this cause are true in substance and in fact.

GOTLIEB BREITLING.

Sworn to and subscribed this 10th day of April, A.D. 1855.

WILLIAM BROOKS,
J. P. M. C.

Demurrers of plaintiffs to defendant's pleas, &c., to wit.

Demurrer, etc.

The plaintiff demurs in short by consent to the several pleas of the defendant hereinafter described, by their numbers, and for cause of demurrer shows as follows:

To the first plea of defendant. Because the said alleged foot-note printed on the bond was no part or term or stipulation of said deed, and was a mere directory memorandum, not of the substance or form of the contract.

Second. Because the addition of subscribing witnesses without the knowledge or consent of the defendant, does not operate as an altering or changing of his deed so as to discharge his liability.

Third plea is double, and also to the third plea of defendant. 1. Because defendant could not absolve himself from liability by giving the Government notice to prosecute. 2. Because laches are not imputable to the Government.

To the fourth plea of defendant. Defendant could not discharge his liability by merely notifying the Government of his unwillingness to be further bound by his contract.

To the fifth plea of defendant. Because time does not run against the Government. And this the said plaintiffs are ready to verify. Wherefore, by reason of the insufficiency of each of the said pleas as alleged, the plaintiffs pray judgment, and their debt aforesaid, together with the damages by them sustained on occasion of the detention thereof, to be adjudged to them.

To the sixth plea issued joined.

As to the sixth plea plaintiffs take issue in short by consent.

Motion to strike out as to second plea.

A. J. REQUIER,
U. S. Attorney, Southern District of Alabama.

Minutes Continued.

And afterwards, to wit, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty-six, being a day of said Court, held as last aforesaid, at Mobile, on the second Monday of April, A.D. 1856, the following order was made in said cause, to wit:

Order.

This day came the parties by their attorneys, and the matters of law arising upon the plaintiffs' demurrer to the first, third, fourth, and fifth pleas of the defendant herein pleaded were argued, which was not concluded at the hour of the adjournment of Court.

And afterwards, to wit, on the sixteenth day of April, A. D. 1856, the same being another and subsequent day of the term last aforesaid, the following order was made in the said cause, to wit:

Order.

First and sixth pleas withdrawn.

This day came the parties by their attorneys, and the said defendant, by leave of the Court, withdraws from the pleadings, the first and sixth pleas by him herein pleaded, and the further consideration of the demurrer is postponed by the Court.

And now at this day, to wit, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and fifty-six, being the day of a term of the said Court, first herein written, the following proceedings were had in the said cause, to wit:

Seventeenth April, 1856.

Judgment entry.

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This day came as well the United States of America, by A. J. Requier, Esq., their attorney, as the said defendant by his said attorneys.

Whereupon all and singular the matters of law arising upon the demurrer of the plaintiffs, to the third and fourth pleas of the defendant, being now fully argued and considered by the Court, it is ordered that the said demurrer be sustained. And thereupon the said defendant, by leave of the Court, withdrew his fifth plea herein,

and files pleas of nil debit, and also a denial of the breaches of the writing obligatory set forth in the complaint, to wit:

1. And for a further plea in this behalf, by leave of the Court, the said defendant says, he is not indebted to the plaintiffs in manner and form as they have thereof complained against him, and of this he puts himself upon the country.

2. And for a further plea, by leave of the Court, defendant denies the supposed breach of said writing obligatory, as alleged in the complaint in this cause.

F. S. LYON.
MANNING & WALKER.

And a jury being called to try the issue now joined between the parties, came, to wit: John P. Remy, William L. Waller, A. B. Williams, A. E. Rouse, William Turner, George W. Welch, Elam Phillips, George M. Brewer, William Rogers, N. H. Stephens, E. Benneville, and C. S. Sayre, twelve good and lawful men, who being elected, tried and sworn the truth to speak upon the issues joined, on their oaths do say,—We, the jury, find for the defendant.

It is therefore considered by the Court, that the said defendant go hence without day, and so forth.

Bill of Exceptions.

Filed by the attorney of the United States, and signed and sealed by Hon. John Gayle, Judge of said Court, to wit:

Circuit Court of the United States, Spring Term, 1856.

UNITED STATES OF AMERICA
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GOTLIEB BREITLING.

Be it remembered, that on the seventeenth April, 1856, this cause came on to be heard, and upon the call thereof, the counsel for the plaintiffs moved the Court to suppress the depositions of the following persons, to wit: David E. Moore, John G. Walton, A. M. McDowell, W. H. Roberts, and George G. Lyon, which depositions, with the interrogatories and cross-interrogatories, are as follows, to wit:

Commission to take the deposition of David E. Moore, a witness on behalf of the defendant in said cause.

Commission.

United States of America. Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

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To any Justice or Judge of any Court of the United States, or any

Judge of Supreme or Superior Court, or County Court, or Court of Common Pleas of the State of , or to any Chancellor thereof, or to the Mayor or Chief Magistrate of any town in said State, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine David E. Moore on the interrogatories and cross-interrogatories hereto annexed, as witness in a cause pending in our said Court, wherein the United States are plaintiffs and Gotlieb Breitling is defendant. And therefore, we command you, or any one of you, that you do cause the said Daniel E. Moore to come before you, or either of you, and then and there examine him on oath as a witness in the cause aforesaid. And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said Court, with all convenient speed.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-five.

Issued the 22d day of October, 1855.

Attest, GEO. E. HOLT,
Clerk C. C. Sou. Dist. Ala.

In the Circuit Court of the United States at Mobile, Alabama.

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Interrogatories to be propounded on behalf of the defendant Breitling, to David E. Moore.

Direct Interrogatories.

1st. Were you ever acting Receiver of Public Moneys at the Land Office of the United States at Demopolis, Alabama?

2d. Was there or not any person about Demopolis, in the year 1849, or at any other and what time, by the name of James Lancaster? If yea, what was his age and occupation?

3d. Did or not any person of that name witness the execution by you or by the defendant Breitling, or by any other person, of a bond for the discharge of your duties as such Receiver? If yea, when and where, and who else were present?

4th. Did John G. Walton witness the execution of such bond, or see the same signed by the defendant, and the other parties thereto? If yea, when and where, and who else were present?

5th. Please to append to your deposition your vouchers for the payment of moneys by you to the United States, received by you for them in the office aforesaid, and any certificate or other writing you may have, showing that you have fully paid the same.

6th. How long did you reside in Demopolis, Alabama, after you ceased to act as Receiver as aforesaid? And what was the amount of moneys you left due to you, and of the property you left behind unsold when you removed? And what was the value of the property you took away with you?

7th. Whither did you remove, and where do you now reside? Did you go away clandestinely or openly? Was it or not publicly known before you removed? And if it was, how long was it so known that you intended to remove?

8th. Do you know anything else that would benefit the defendant? If yea, state the same fully.

MANNING & WALKER,
For G. BREITLING.

In the Circuit Court of the United States at Mobile, Alabama.

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Affidavit.

Personally came before me, George E. Holt, Clerk of said Court, Percy Walker, one of the attorneys for the defendant in the above-entitled cause now pending in said Court, who upon oath sayeth, that he believes that the testimony of the witness David E. Moore, to whom the foregoing interrogatories are propounded, is material to the defendant, and that said witness resides more than one hundred miles from the place of holding said Court.

PERCY WALKER.

Sworn to and subscribed before me, October 22d, 1855.

GEO. E. HOLT,
Clerk.

In the Circuit Court of the United States for the Southern District of Alabama.

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Objections.

The District Attorney of the United States for the said District objects to the competency of David E. Moore as a witness for the

defendant in the above-stated cause, because the said Moore is interested in the event thereof. It is further objected to the direct interrogatories filed, that the sixth and seventh are irrelevant; and so objecting, the said attorney propounds the following cross-interrogatories to the said David E. Moore.

Cross-interrogatories.

1st. If you say yea to the first direct interrogatory, state further whether you did not execute a bond for the proper discharge of your duties as such Receiver on the 7th day of May, A. D. 1849, and whether the defendant did not execute that bond with you as your surety?

2d. Was not that bond sent you in blank from Washington, to be filled up by you according to directions forwarded therewith? And was there not a directing note, conspicuously printed at the bottom thereof, stating the same should be attested by two witnesses?

3d. Upon the execution of said bond to whom did you forward it, and was the same accompanied with a letter from you? If the last, and you have a copy of such letter, append it to your answer; if not, state the contents.

4th. Was not said bond attested by John G. Walton and James Lancaster as witnesses? And did you not represent to the department to which the same was forwarded that you had regularly pursued the directions sent you?

5th. Were the names of John G. Walton and James Lancaster, attesting witnesses on the said bond at the time you forwarded it, mere fictions, or the names of real persons in being? If the former, who wrote the same on said bond? If the latter, what was the residence and occupation of said persons at the time of signing, and where are they now?

6th. When was said bond executed?

7th. If you know anything that would benefit the plaintiffs state the same fully.

A. J. REQUIER,
United States Attorney, Southern District of Alabama.

I waive the notice required to be given by law, but reserve all other legal exceptions.

A. J. REQUIER,
United States Attorney, Southern District of Alabama.

Filed October 22d, 1855.

GEO. E. HOLT,
Clerk.

Deposition of D. E. Moore.

The State of Texas, County of Travis.

By virtue of the annexed commission from the Circuit Court of

the United States at Mobile, in the State of Alabama, in the suit of the United States of America against Gotlieb Breitling, I, Thomas H. Duval, Judge of the District Court in and for the Second Judicial District of the State of Texas (the same being one of the Superior Courts of said State), did cause and call to come before this 30th day of November, A.D. 1855, at my office, in the City of Austin, in the State of Texas and County of Travis aforesaid, David E. Moore, of County, in said State, and whose identity has been satisfactorily proved to me, and I having first carefully examined, cautioned, and sworn the said David E. Moore to speak the truth, the whole truth, and nothing but the truth in said cause, he thereupon testified in reply to the interrogatories and cross-interrogatories accompanying said commission as follows, to wit:

Answer to interrogatory 1st. I was once Receiver of Public Moneys at the Land Office in Demopolis, Ala.

2d. I knew no person about Demopolis, Ala., in the year 1849, or at any other time, of the name of James Lancaster.

3d. No person of that name witnessed the execution by me or by the defendant, Breitling, or any other person, of my bond for the discharge of my official duties as such Receiver.

4th. John G. Walton did not witness the execution of such bond, or see any of the parties thereto sign the same, except the name of Smith, of which *of which* I am not now certain; my impression is that no person was present when Walton signed as a witness.

5th. I have no voucher, receipts, or evidences of payment to the United States in my possession; all the papers of the office were left on file, and surrendered to my successor.

6th. I resided in Demopolis about nine months after I had ceased to act as Receiver, and I left in the hands of my attorney claims amounting to between two and three thousand dollars, and also the evidences of title to several parcels of land in Alabama, the value of which I am unable to estimate. I cannot state with any certainty the value of the property I took with me from Demopolis.

7th. I removed to the State of Texas, and now reside in said State. I left Demopolis openly and publicly, and I have no doubt it was generally known that I was going to remove. I commenced my preparations for removal soon after I had sold my property in Demopolis in the summer of 1850, and so continued until my departure in the month of June, 1851.

8th. I know nothing else that would benefit the defendant.

D. E. MOORE.

Answers to Cross-interrogatories.

1st. I did execute a bond in the month of May, 1849, for the discharge of my official duties as Receiver, which bond the defendant, Breitling, signed as my security.

2d. Yes.

3d. I forwarded said bond agreeably to instructions to some officer of the Treasury at Washington—the precise one I cannot now remember—accompanied with a letter, a copy of which is on file in the Land Office at Demopolis. I have none, nor do I remember the precise contents.

4th. The said bond is attested by the names of John G. Walton and James Lancaster as witnesses. I have no recollection of representing to the Department to which I forwarded said bond that it was so executed.

5th. John G. Walton signed the said bond as a witness in person, and was by occupation a farmer, and resided in Greene County, near Demopolis; he now resides in Falls County, Texas. The name of James Lancaster is fictitious. No such person is or was in being at the time of forwarding the said bond to the department at Washington. I procured his name to be signed as witness on my way to Mobile to have the bond certified by the District Judge.

6th. Said bond was executed in May, 1849. I think 7th of said month.

7th. I know nothing else that would benefit the plaintiff.

D. E. MOORE.

Which testimony of the said witness was by said witness written down in my presence, and being by him distinctly understood and approved, was signed by him in my presence, on the day and year and at the place in my certificate above set forth.

I do furthermore certify that this place and the place of residence of said witness are more than one hundred miles distant both from the City of Mobile, in the State of Alabama, and from the seat of Government of the United States aforesaid, and that the Attorney of the United States does not reside, and is not within one hundred miles of this place or of the residence of the witness, so far as I know or believe, and that I am not of counsel or attorney for, or of kin to either of the parties to said suit, or interested in the event thereof.

Given under my hand and private seal, at the City of Austin, this 30th day of November, A.D. 1855.

THO. H. DUVAL, [L. S.]
Judge of the Second Judicial District,
for the State of Texas.

The State of Texas. Executive Department.

I, the undersigned, Governor of the State aforesaid, do hereby certify that Tho. H. Duval, whose name is subscribed to the instrument of writing hereto annexed, was, at the time of signing the same, Judge of the Second Judicial District, for the State of Texas, duly elected, qualified, and commissioned, and that his attestation is in due

form, and by the proper officer, and that full faith and credit are due his official acts as such.

In testimony whereof, I have caused the seal of the State to be hereunto affixed.

Done at the City of Austin this thirtieth day of November,
[L. S.] 1855, and of the Independence of the United States the eightieth, and of Texas the twentieth year.

By the Governor, E. M. PEASE.

EDWARD CLARK,
Secretary of State.

Commission to take J. G. Walton's Deposition.

United States of America.

Circuit Court of the United States for the Fifth Judicial Court and Southern District of Alabama.

THE UNITED STATES
v.
GOTLIEB BREITLING.

To any Judge of any Court of the United States or Judge of the Supreme or Superior Court, or County Court, or Court of Common Pleas, of the State of , or to any Chancellor thereof, or to the Mayor or Chief Magistrate of any town in said State, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents, do give you, or any one of you, full power and authority to examine John G. Walton on the interrogatories and cross-interrogatories hereto annexed, as witness in a cause pending in our said Court, wherein the United States are plaintiffs, and Gotlieb Breitling is defendant, and therefore we command you, or any one of you, that you do cause the said John G. Walton to come before you, or either of you, and then and there examine him on oath as witness in the cause aforesaid. And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said Circuit Court, with all convenient speed.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-five.

Issued 22d day of October, 1855.

Attest, GEO. E. HOLT,
Clerk Circuit Court, South. District of Alabama.

Direct Interrogatories.

In the Circuit Court of the United States at Mobile, Alabama.

THE UNITED STATES
v.
GOTLIEB BREITLING.

Interrogatories to John G. Walton on behalf of the defendant, Breitling.

1st. What is your age and occupation? Are you acquainted with Gotlieb Breitling, of Marengo County, Alabama, and with David E. Moore, formerly Receiver of Public Moneys at the United States Land Office at Demopolis, in said State?

2d. Did you or not subscribe your name as a witness to a bond purporting to be on the seventh day of May, in the year 1849, by the said David E. Moore, Gotlieb Breitling, and by Robt. H. Carson and Rowan A. Smith, for the faithful discharge by said Moore of the duties of Receiver of Public Moneys as aforesaid? If yea, when, where, and in whose presence? Was the said Breitling, or Carson, or Smith, or Moore, present when you did so, or did you witness their signing the same, or not?

3d. Where did they reside in May, 1849? Were you well acquainted in the place and neighborhood where they resided at that time? Was there any person then living there, or near there, known to you by the name of John G. Walton?

4th. Did you or not know of any person residing or being about there of the name of James Lancaster? If yea, what was his age and occupation? And did you or not see such person witness the bond aforesaid, or know of his doing so?

5th. Do you know of anything else that would benefit the defendant Breitling? If yea, state the same.

MANNING & WALKER,
For Defendant Breitling.

In the Circuit Court of the United States at Mobile, Alabama.

THE UNITED STATES
v.
GOTLIEB BREITLING.

Affidavit.

Personally came before me, George E. Holt, Clerk of said Court, Percy Walker, one of the attorneys for the defendant in the above-entitled cause now pending in said Court, who upon oath saith that he believes the testimony of the witness, John G. Walton, to whom the foregoing interrogatories are propounded, is material to the de-

fendant, and that said witness resides more than one hundred miles from the place of holding said Court.

PERCY WALKER.

Sworn to and subscribed before me, October 22d, 1855.

GEO. E. HOLT,
Clerk.

Exceptions.

The District Attorney of the United States for the said District excepts on behalf of plaintiffs to the 2d, 3d, and 4th direct interrogatories addressed by defendant's counsel to the witness hereinafter mentioned, on the ground of irrelevance, and other grounds to be shown at the hearing, and so objecting, propounds the following cross-interrogatories to John G. Walton, a witness on behalf of the defendant.

Cross-interrogatories.

1st. Did you reside at Demopolis on the 7th day of May, A. D. 1849? If yea, was there any other John G. Walton residing in said place, or the county to which said place belongs, whom you knew at that time? How long had you then resided there? How long in the State? And did you know every person of the name of Walton in the State? If nay, where did you then reside?

2d. Where do you now reside, and how long have you been there?

3d. If you say yea to the second direct interrogatory, state further, whether your signature was placed thereupon in the presence and at the request of the defendant Breitling, or either? If in his presence, but not at his request, state at whose solicitation, and the circumstances generally? If at his request, but not in his presence, did you afterwards show him the signature, or did he tell you he had seen and approved of it? State, in either alternative, what he said or did?

4th. If you say nay to the last-mentioned direct interrogatory, state further whether you did not in the presence, and at the request, or either, of Gotlieb Breitling, the defendant, at any time past, attest an instrument in writing, the character of which you did not know, and were not informed about?

5th. Do you remember every instrument that you have ever attested or witnessed?

6th. Can you undertake to swear that a signature purporting to be yours is or is not genuine, without the same being produced to you, and without any inspection thereof?

7th. Have you had any conversations with the defendant in respect to what you could testify in this suit, or received any communication from his counsel upon the subject? If the former, state the substance thereof? If the latter, append the same to your answer? Did you know a person of the name of James Lancaster, in the year

1849, either as a resident of the State of Alabama, or a mere sojourner therein? If yea, what has become of him, and where is he now, if living?

8th. Do you know anything further that would benefit the plaintiff? If yea, state the same fully.

A. J. REQUIER,
U. S. Att'y Sou. Dist. of Ala.

I waive the notice required to be given by law, but reserve all other legal exceptions.

A. J. REQUIER,
U. S. Att'y Sou. Dist. Ala.

Filed October 22d, 1855.

GEO. E. HOLT,
Clerk.

Deposition of John G. Walton.

The State of Texas, County of Falls.

By virtue of the annexed commission from the Circuit Court of the United States of America at Mobile, in the State of Alabama, in the suit of the United States of America against Gotlieb Breitling, I, R. W. Scott, a Justice of the Peace of the town of Marlin, in the said County and State, did call and cause to come before me, at my office in said town, on this the 3d day of December, A.D. 1855, John G. Walton, who is a resident citizen of said County of Falls and State of Texas, and who is to me personally known, and I having first carefully examined, cautioned, sworn the said John G. Walton to speak the truth, the whole truth, and nothing but the truth in said cause, he thereupon testified in reply to the interrogatories and cross-interrogatories accompanying said commission as follows:

Direct Interrogatories.

1st interrogatory. About 44. A farmer. I am.

2d interrogatory. I did subscribe such bond, purporting to be made by such parties in Demopolis, Ala. I do not remember who was present, except R. A. Smith. As near as I remember, it was in 1849. They were not present. I did not. When I signed the bond as witness, I expected the parties to acknowledge their signatures before me, but I did not get to see them in relation to the matter.

3d interrogatory. In Demopolis, Ala., I was. There was not.

4th interrogatory. I did not. I did not.

5th interrogatory. I did not.

JOHN G. WALTON.

Cross-Interrogatories.

Interrogatory 1st. I never resided at Demopolis. There was no

other of that name. I did not. In Greene Co., Ala. About 30 years.

Interrogatory 2d. In Texas. I have been a Texan about 4 or 5 years.

Interrogatory 3d. At the solicitation of A. R. Smith. At the time I signed the bond I expected the parties to acknowledge their signatures; but I did not see them. I did show him the signature.

Interrogatory 4th. I did not.

Interrogatory 5th. Don't, unless it was brought to memory.

Interrogatory 6th. I cannot.

Interrogatory 7th. I have not. I never knew a man by the name of James Lancaster.

Interrogatory 8th. I do not.

JOHN G. WALTON.

Which testimony of the said witness was by said witness written down in my presence, and being by him distinctly understood and approved, was signed by him in my presence, on the day and year, and at the place in my certificate above set forth. And I further certify that this place and the place of residence of said witness are more than one hundred miles distant both from the City of Mobile, in the State of Alabama, and from the seat of government of the United States aforesaid, and that the attorney of the United States does not reside and is not within one hundred miles of the place or of the residence of the witness, so far as I know or believe.

In testimony, I have hereunto set my hand and seal (using a scrawl for seal), this December 3d, 1855.

R. W. SCOTT, [SEAL.]
Justice of the Peace, Falls Co., Texas.

The State of Texas, County of Falls.

I, Samuel D. Barclay, Clerk of the County Court of Falls County, do hereby certify, that R. W. Scott, before whom the foregoing depositions were taken, was, at the time of so doing and now, an acting Justice of the Peace in and for said Falls County, and that he has been duly commissioned and sworn, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I hereunto subscribe my name, and [L. S.] affix the impress of my official seal, at office in Marlin, this 3d day of December, Anno Domini 1855.

SAMUEL D. BARCLAY,
County Clerk of Falls County, Texas.

Commission to take the Depositions of McDowell, Roberts, and Lyon.

United States of America, Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

UNITED STATES
v.
GOTLIEB BREITLING.

To John T. Lomax and R. M. Campbell, Esqs., greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine Alexander M. McDowell, William H. Roberts, George G. Lyons, and Lewis B. McCarty, as witnesses in a cause pending in said Court, wherein the United States of America are plaintiffs, and Gotlieb Breitling defendant. And therefore we command you, or any one of you, that at such time and place as you may appoint, you do cause the said persons above named, witnesses on behalf of the defendant in said cause, to come before you, or either of you, and then and there examine them on oath as witnesses on the accompanying interrogatories. And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said Circuit Court, with all convenient speed.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said [L. S.] Circuit Court, the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-five.

Issued the second day of April, 1856.

Attest, GEO. E. HOLT,
Clerk Circuit Court, Southern District of Alabama.

Interrogatories to Alexander M. McDowell, William H. Roberts, and George G. Lyon, on behalf of the Defendant.

1. Did you know David E. Moore, formerly Receiver of Public Moneys of the Land Office of the United States at Demopolis, Alabama? If yea, how long, and where did you know him? When did he remove from Demopolis? Did he take property away with him when he removed? If yea, of about what value? To what part of the country did he go, or say he was going, when he removed? Was it or not generally known for a considerable time before his removal that he intended to go away? And did he not go away openly, and by what route?

2. Did or not said Moore have due him large sums of money from persons in or near Marengo County when he went away? If yea, about how much, to your knowledge? Were or not such moneys afterwards collected and sent to him, or paid according to his order? State what you may know about this matter.

To Alexander McDowell only.

3. What office, if any, connected with the Land Office at Demopolis, did or do you hold, and when did you hold the same?

4. Was not the said office examined by agents of the Government at Washington after the said David E. Moore was Receiver as aforesaid? If yea, when, and by what agents? State all you may know respecting their examinations that may benefit the defendant, and whether or not said Moore resided at Demopolis at the time?

5. Was there or not any entry at such times on any of the books of the office of moneys deposited to the credit of the Government, or paid to any of its agents or officers by said Moore, at the time when such book or books were examined by the said examining agents? If yea, what was the entry, and how and upon what account was it made? Please set forth a copy of the account and entry.

To all the witnesses.

6. Do you know anything else that would benefit the defendant in this cause? If yea, please state the same.

F. S. LYON and MANNING & WALKER,
For Defendant.

Consent of U. S. Attorney.

I waive affidavit of the materiality of the witnesses above named, and that they reside more than one hundred miles from the place of holding Court, and I consent to an examination of witnesses upon interrogatories, and that a commission issue to John T. Lomax and Campbell, as Commissioners, authorizing them, or either of them, to examine the witnesses. I reserving, however, all right to except to the testimony that may in itself be exceptionable, apart from the mode of taking the same by interrogatories and commission.

A. J. REQUIER,
U. S. Att'y Sou. Dist. of Ala.

March 28, 1856.

Exceptions by U. S. Attorney.

In the above-stated case the counsel of the United States of America excepts to the several interrogatories propounded, to wit, the first, second, third, fourth, fifth, and sixth thereof, because the same seek, each and all of them, to elicit evidence which is incompetent for manifest irrelevancy, and other causes to be developed at the hearing hereof.

A. J. REQUIER,
U. S. Att'y Sou. Dist. of Ala.

Mobile, March 28th, 1856.

State of Alabama, Marengo County.

I, the undersigned, Campbell, certify that the annexed Commission

from the Circuit Court U. S. was delivered to me by F. S. Lyon, Esq., one of the attorneys whose name is subscribed to the interrogatories thereto appended, in the presence of the defendant in the cause therein named, who have made satisfactory and full proof to me that I am the person named as a Commissioner therein, the said defendant testifying that he was present at the time and place when the said Commission was prepared in that respect, &c. And they together, having made such proof, and requested me to execute the requirements thereof, as well for, &c. Now, therefore, I have caused the persons named therein as witnesses, to wit, William H. Roberts, Alexander McDowell, and George G. Lyon, to come before me at my office, in the town of Demopolis, in said County, on the ninth and tenth days of April, A. D. 1856, and after causing them to be first sworn to speak the truth, the whole truth, and nothing but the truth, have propounded to them, and to each of them separately, the interrogatories annexed to said Commission, and that William H. Roberts, the witness first sworn, answers thereto as follows:

Deposition of Wm. H. Roberts.

1. First interrogatory. I knew David E. Moore in Demopolis, Alabama, from the year 1839 until he removed to Texas, in the summer of the year 1851. He was Receiver of Public Moneys in the Land Office at Demopolis, Ala., from about 1838 or 1839, until about September of 1850. He did take property with him when he removed to Texas. He had some five or six negroes. He went away openly and publicly. It was generally known for some time that he intended to remove. He sold his warehouse in Demopolis about August of 1850, for $7500, but how much of this was due to him I do not know. I knew Moore well up to the time when he removed, and considered him solvent, and good for his debts.

WM. H. ROBERTS.

Sworn and subscribed in my presence, 9th April, A. D. 1856.

Attest, CAMPBELL, [SEAL.]
Commissioner.

And that Alexander M. McDowell, next examined, answers the interrogatories propounded to him (being the six interrogatories subscribed by defendant's attorneys) as follows, to wit:

Deposition of A. M. McDowell.

1. To first interrogatory. I knew David E. Moore, late Receiver of Public Moneys in the Land Office at Demopolis, Ala. I knew him in Demopolis from about the year 1835 to 1851. He removed from Demopolis to Texas in the spring or summer of the year 1851. He did take property with him when he removed. He took some negroes. He took with him a man Nelson, worth twelve hundred

dollars. I do not know the value of the others. He went from this place to Shelby County, in Texas. It was generally known for a considerable time that before he removed, that he intended going to the State of Texas. He went away openly.

2. To second interrogatory. Moore left money due him in Marengo County, when he removed. I owed him, and paid his agent after he left Demopolis, $1791. G. G. Griffin and O. H. Prince owed him also about $3750 for the purchase of his warehouse property. We bought the property not long before he left. These parties were solvent, or all able to pay and did pay (all of them). Moore owned lands in Marengo and Sumter Counties, in this State, about the time when he removed, but I am not informed as to their value.

3. To third interrogatory. Moore was Receiver of Public Moneys in the Land Office at Demopolis, Alabama. After his resignation, about September of 1850, I was appointed in his place.

4. To fourth interrogatory. The Land Office was examined in the fall of the year 1850 by Mr. Camp, as the agent of the Government. He examined D. E. Moore's books, and mine also, for the short time I had been in office. In a book kept by Moore there is an entry in his handwriting in these words, to wit: "Nov. 10, 1850. I have this day transmitted to Mobile, to avoid risk, eight thousand five hundred dollars, to await the order of the Treasury Department.

(Signed) "D. E. MOORE, Receiver."

Which statement is in the quarterly account book. This book was before the examining agent, with all the others of the office. This agent not only examined the books, but counted my money, and Moore was present, submitting his transactions as Receiver to the examining agent. What report the agent made I don't know.

5. To fifth interrogatory. I know that Moore's books were submitted to the agent, Camp, and that the entry copied in the answer to the last foregoing interrogatory was in the quarterly account-book, in Moore's handwriting.

6. To sixth interrogatory. The practice of the office was for the Register and the Receiver to make monthly reports to the General Land Office of the sales of lands, and of the receipts and disbursements for each month. Each officer's report was a check upon the others. My understanding is, that the instructions then were to deposit moneys with the Collector of the Port of Mobile quarterly, or oftener, if the amount exceeded $6000. The Receiver, in addition to reporting monthly to the Commissioner of the General Land Office, was required to report monthly the state of his cash account to the Treasurer of the United States, and to the Secretary of the Treasury, and these reports had to be indorsed by the Register with his certificate that they were correct, and showing the amount and kind of money, and how it was kept, and that he had counted the money.

A. M. McDOWELL.

Sworn to and subscribed in my presence, this 10th day of April, 1856.

(The said) CAMPBELL, [L. S.]
Commissioner.

George G. Lyon, Esq., being next sworn and examined upon the interrogatories propounded to him, answers as follows, to wit:

Deposition of George G. Lyon.

1. To first interrogatory. I knew David E. Moore, in Demopolis, from about the year 1840 until the time of his removal to Texas in the year 1851. He was Receiver of Public Moneys in the Land Office at Demopolis, Ala., from to about September of 1850. He removed to Texas in the summer of 1851, and took with him about six negroes. It was known generally for a considerable time, and before he left, that he was going to remove to Texas. He went away openly.

2. To second interrogatory. Moore had due him considerable sums of money here when he went away. I collected for him, after he left, as his attorney, about $2500, and paid the same to his order. Griffin and Prince and A. M. McDowell, it was understood, owed him about $7500. I only collected about $1700 of this from McDowell. Moore owned when he went away in 1851 (and still owns it) lands in Marengo, Sumter, and Choctaw Counties, about 640 acres in all; but I do not know their value. Three dollars an acre was offered for a part of the land and declined.

3. To the third interrogatory. I do not and did not hold any office connected with the Land Office.

4. To fourth. I do not know; but I have seen persons here rumor said were agents to examine the Land Office while Moore was Receiver, and since.

5. To fifth. I do not know.

6. To sixth. I do not know, except that Moore said to me when he was about to leave for Texas that he owed the Government nothing, and owed no one else anything, except a few claims he instructed me, as his attorney, to pay out of the moneys I was to collect for him.

GEO. G. LYON.

Subscribed in my presence the 9th day of April, 1856, after having been sworn on same day.

Attest, CAMPBELL, [L. S.]
Commissioner.

And I, the said Campbell, a Commissioner named in said commission, further certify, that the interrogatories hereinbefore mentioned are the six interrogatories received with said commission, signed F. S. Lyon and Manning & Walker for defendant; that those and they

only were propounded to the said witnesses as stated in caption, and that these sworn answers thereto were reduced to writing by me at the times when they were delivered (except deposition of G. G. Lyon, as written by himself), and being so reduced to writing, were examined by the said witnesses respectively, and by them approved as a true statement of their said answers, and thereupon by them respectively subscribed in my presence on the said 9th and 10th days inst., as above indicated at the conclusion of each separate statement, which statements are correct and true reports of their said answers to said interrogatories. I further certify, that I have personal knowledge of the personal identity of said witnesses; that they were examined at said place and time, as by me appointed, and that such of their examinations as were not completed and ended on the ninth, were finished and subscribed on the said tenth day, in accordance with the requirements of the writ from the Honorable United States Circuit Court, dated second day of April, which writ and interrogatories are hereto annexed. Witness my hand and seal this 10th day of April, A.D. 1856.

R. M. CAMPBELL, [L. S.]
Commissioner.

Filed 14th April, 1856.

GEO. E. HOLT,
Clerk.

Exceptions, Bill of, continued.

Which motion the Court overruled, and refused to suppress said depositions, or any or either of them, or any part thereof. The plaintiffs' counsel waived the objection that the deposition of John G. Walton was taken before a Justice of the Peace. Whereupon the Court proceeded to try said cause, when the plaintiffs' counsel offered and read in evidence to the Jury the bond on which the action is founded, which bond, together with the printed note at the foot of said bond is as follows, to wit:

Bond.

Know all men by these presents, that we, David E. Moore, Gotlieb Breitling, Robert H. Carson, and Rowan A. Smith (all of Demopolis), are held and firmly bound unto the United States of America in the full and just sum of twenty-five thousand dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this seventh day of May, in the year of our Lord one thousand eight hundred and forty nine. The condition of the foregoing obligation is such that whereas the President of the United States hath, pursuant to law, appointed the said David E. Moore receiver of Public Moneys for the district of lands subject to

sale at Demopolis, in the State of Alabama, until the end of the next Session of the Senate of the United States, by Commission dated 7th day of April, 1849. Now, therefore, if the said David E. Moore hath truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge all the duties of the said office according to law, then the above obligation to be void and of none effect; otherwise it shall abide and remain in full force and virtue.

DAVID E. MOORE,	[SEAL.]
GOTLIEB BREITLING,	[SEAL.]
ROBERT H. CARSON,	[SEAL.]
ROWAN A. SMITH.	[SEAL.]
	[SEAL.]
	[SEAL.]
	[SEAL.]

Signed, sealed, and delivered in presence of
JOHN G. WALTON,
JAMES LANCASTER,
Of Demopolis, Ala.

Printed note at foot of the Bond.

NOTE.—The names to be written and signed in full, seals to be affixed with wax or wafer, signatures to be witnessed by two witnesses. The sufficiency of the sureties to be certified by the United States District Judge or Attorney. After the sureties shall have justified on oath as to their sufficiency respectively, before a District Judge of the United States, when there is one in the District, otherwise before some Judge or other magistrate duly authorized to administer oaths, which authority shall be certified by the Clerk of the proper Court under his seal of office.

The following are the indorsements written upon said bond, to wit:

The State of Alabama, Marengo County.

I, David E. Moore, do solemnly swear, that I will faithfully discharge the duties of the Office of Receiver of Public Moneys at Demopolis in said State, and that I will faithfully support the Constitution of the United States of America. So help me God.

D. E. MOORE.

Sworn to and subscribed before me, this, the seventh day of May, A. D. eighteen hundred and forty-nine.

JAMES A. YOUNG,
Judge of the County Court of Marengo County.

The State of Alabama, Marengo County.

I, Thomas J. Woolf, Clerk of the County Court of Marengo County, do certify that James A. Young, whose signature appears to the

above oath, is the presiding Judge of said County Court, duly commissioned and qualified, and that his official acts as such are entitled and should receive full faith and credit.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my seal of office at office, in the town of Linden, on the seventh day of May, A. D. 1849.

THO. J. WOOLF,
Clerk.

United States of America, Southern District of Alabama.

From evidence furnished me of the responsibility of the parties who have executed the within bond, I do certify that the said securities are good and sufficient for the penalty of the same.

P. HAMILTON,
U. S. Attorney Sou. Dist. of Alabama.

MOBILE, May 24, 1849.

And also the following indorsement is written on the margin of said bond, to wit:

General Land Office, June 11th, 1849. Approved.

RICHARD M. YOUNG,
Commissioner.

Bond indorsed, "David E. Moore, Receiver, Demopolis, Alabama. $25,000. Bond dated 7th May, 1849, till end next Session of the Senate.

Exceptions, continued.

The defendant then offered to read in evidence the depositions above referred to, when the plaintiffs' counsel objected to the reading of the depositions of McDowell, W. H. Roberts, and Geo. G. Lyon, as they were severally offered, which objection the Court overruled. The plaintiffs' counsel objected to the evidence of D. C. Anderson, who was examined as a witness by defendant, whose evidence went to show that Smith, one of the obligors to the bond, was poor and in straitened circumstances, which objection was overruled. This, together with the depositions above referred to, was all the evidence offered by defendant, and the same having been submitted to the Jury, and argued by counsel, the Court, at the request of the defendant's attorneys, charged the Jury, "that if the Jury believe from the evidence that at the time Breitling's name was signed to the bond, it was understood and intended that other persons were to sign it as obligors, and he was to have notice that they did so, and who they were, and then if satisfied was to acknowledge the bond in the presence of witnesses, who were to attest it, and if this was not done, and the bond was not afterwards ratified by him, the Jury ought to find for the defendant;" to which charge the plaintiffs' counsel excepted.

And the Judge therefore signs and seals their bill of exceptions, this 15th day of May, 1856, a day after the adjournment of the Court.

JOHN GAYLE. [SEAL.]

Explanations attached to the Bill of Exceptions.

"During the term of the Court the attorney for the United States presented a Bill of Exceptions. The Bill was presented on Saturday before the Court adjourned, which was on Wednesday. On Monday morning the bill was handed to the U. S. Attorney, with the request that he submit it to the opposing counsel. On the third day after this the minutes were signed, and the Court adjourned.

I heard nothing further from the Bill till the 9th or 10th May, when it was presented by the plaintiffs' attorney again, with the written objections of the attorneys of the defendant, that it should be signed after the adjournment. The Clerk will subjoin this explanation to the Bill of Exceptions.

JOHN GAYLE."

Filed 15th May, 1856.

GEO. E. HOLT,
Clerk.

Writ of Error.

United States of America. The President of the United States to the Judges of the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama, greeting: Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in said Circuit Court of the United States for the Southern District of Alabama before you, wherein the United States of America are plaintiffs, and Gotlieb Breitling defendant, manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, the twenty-first day of June, A.D. 1856.

(Attest) GEO. E. HOLT,
Clerk C. C. Sou. Dist. Ala.

Citation in Error.

United States of America, Southern District of Alabama, *ss.*

To Gotlieb Breitling, or to Messrs. F. S. Lyon, and Manning & Walker, his attorneys, greeting: You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, on the first Monday of December next, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of Alabama, wherein the United States of America are plaintiffs, and the said Gotlieb Breitling is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the plaintiffs in that behalf.

Witness the Hon. John Gayle, one of the Judges of the Circuit Court aforesaid, the twenty-first day of June, A. D. 1856.

JOHN GAYLE,
Judge, &c.

Marshal's Return.

"Received June 21, 1856, and executed July 19th, 1856, by serving A. R. Manning, the defendant's counsel, with a copy of this citation.

C. M. GODBOLD,
U. S. M.
By W. H. GASQUE,
D. M."

I, George E. Holt, Clerk of the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama, do hereby certify that the foregoing seventy-six pages contain a full, true, and complete transcript of the record and proceedings had in said Court in a certain cause therein lately determined, wherein the United States of America were plaintiffs, and Gotlieb Breitling defendant, together with the writ of error and citation in error, as appears from the records of said Court, and papers in said cause on file in my said office.

In testimony whereof I have hereunto put my hand, and affixed the seal of said Circuit Court at office, in the city of Mobile, the eighth day of August, in the year of our Lord one thousand eight hundred and fifty-six.

[SEAL.]

(Attest) GEO. E. HOLT,
Clerk U. S. Ct. and Dist. Courts, Sou. Dist. Ala.